

**REMARKS**

**A. The Statutory Double-Patenting Rejections**

Claims 1-3 and 14-16 were rejected under 35 U.S.C. §101 (statutory double-patenting) as claiming the same invention as that of claims 1-3 and 14-16 of U.S. Patent No. 6,724,722 ('722 Patent). Applicants respectfully disagree.

Claims 1-3 and 14-16 of the present invention include the selection of a path “with consideration to minimizing” the maximum value of a link utilization based on a cost metric. In comparison, the '722 Patent is silent with respect to such a consideration step. Accordingly, Applicants respectfully submit that the claims of the present invention do not represent the same subject matter or invention as the claims of '722 Patent.

As the Applicants have pointed out before, this consideration step is necessary to provide an optimal path selection. Techniques which do not incorporate such a consideration step may not achieve such an optimal path selection.

Accordingly, because claims 1-3 and 14-16 of the present invention are not directed at the same invention as the claims of the '722 Patent, Applicants respectfully request withdrawal of the statutory double-patenting rejections and allowance of claims 1-3 and 14-16.

**B. The Non-Statutory Double-Patenting Rejections**

Claims 4-13 and 17-26 were rejected under the judicially created doctrine of obvious-double patenting as being unpatentable over claims 4-13 and 17-26 of the '722 Patent.

Without admitting or denying the substance of these rejections, the Applicants have submitted a terminal disclaimer (see Attachment A). Accordingly, by filing this terminal disclaimer the Applicants believe that the non-statutory, double-patenting rejections are now moot.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 4-13 and 17-26.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number of the undersigned below.

In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

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